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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0782; FRL-10215-01-R4]

Air Plan Approval; NC; Miscellaneous NSR Revisions and Updates; Updates to References to Appendix W Modeling Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision, submitted by North Carolina on April 13, 2021. Specifically, EPA is proposing to approve updates to the incorporation by reference of federal new source review (NSR) regulations and federal guidelines on air quality modeling in the North Carolina SIP. Based on its proposal to approve this revision, EPA is also proposing to convert the previous conditional approval regarding infrastructure SIP prevention of significant deterioration (PSD) elements for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) for North Carolina to a full approval. EPA is also proposing to approve additional updates to North Carolina's NSR regulations to better align them with the federal rules. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0782 at www.regulations.gov. Follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

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SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant

to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP or iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

On September 27, 2018, North Carolina met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA approved most of the infrastructure SIP elements for the 2015 Ozone NAAQS for North Carolina.² However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved³ these portions of North Carolina’s iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR part 51.⁴

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

²EPA approved most elements for North Carolina, except for the Interstate Transport provisions (Prongs 1 & 2) and the PSD provisions (elements C, Prong 3, and J), on March 11, 2020. *See* 85 FR 14147. EPA approved the interstate transport provisions (Prongs 1 & 2) for North Carolina on December 2, 2021. *See* 86 FR 68413.

³ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁴ *See* 85 FR 20836 (April 15, 2020).

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current federal requirements. Element D(i)(II) (prong 3) is also approvable when a state's implementation plan contains a fully approved, up-to-date PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W, *Guideline on Air Quality Models*. EPA promulgated the most current version of Appendix W on January 17, 2017 (82 FR 5182). Therefore, in order to approve the iSIP PSD elements for the 2015 8-hour ozone NAAQS, PSD regulations in SIPs are required to reference the most current version of Appendix W.

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, North Carolina's SIP contains outdated references to Appendix W and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, North Carolina was required to make its submission by April 15, 2021. North Carolina met its commitment by submitting SIP revisions to correct the deficiencies on or before the deadline. Through this Notice of Proposed Rulemaking (NPRM), EPA is now proposing to approve the changes to the North Carolina SIP and to convert the conditional approval to full approvals for North Carolina, regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP.

II. What is EPA's Approach to the Review of Infrastructure SIP Submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various

requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁵ Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁶ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis of North Carolina's April 13, 2021, Submittal

On April 13, 2021, North Carolina submitted a SIP revision to address the readoption of several state air quality rules.⁷ Part of that submission contains updates to the State's major NSR regulations, including updates to the version of 40 CFR part 51, Appendix W, incorporated by reference into North Carolina's PSD rules in order to meet the PSD Infrastructure SIP requirements for the 2015 8-hour ozone NAAQS and to satisfy the April 15, 2020, conditional approval of element C, Prong 3, and element J of

⁵ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multi_pollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on the North Carolina infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 47115 (July 20, 2016).

⁶ *See* Mont. Env'tl. Info. Ctr. v. Thomas, 902 F.3d 971 (9th Cir. 2018).

⁷ The April 13, 2021, submission included many North Carolina rules which the State requested EPA approve into the SIP. This NPRM only proposes approval of changes to 15A NCAC 02D .0530 and .0544. All other portions of the April 13, 2021, submission will be or have been addressed in separate rulemakings.

North Carolina’s 2015 8-hour ozone NAAQS infrastructure SIP. Specifically, the April 13, 2021, SIP revision makes changes to North Carolina Rules 15A NCAC 02D .0530, *Prevention of Significant Deterioration*, and .0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*.

As explained in Sections III.A and III.B of this preamble, EPA is proposing to approve the changes to these regulations into the North Carolina SIP, and to convert the conditional approval of element C, Prong 3, and element J, of North Carolina’s 2015 8-hour ozone NAAQS infrastructure SIP to a full approval.

A. 15A NCAC 02D .0530, *Prevention of Significant Deterioration*

1. Revisions to the North Carolina PSD Rule

The proposed changes to Rule 02D .0530 in North Carolina’s April 13, 2021, submission include changes to better align with language found in the federal PSD regulations at 40 CFR 51.166, as well updating the incorporation by reference date to the federal rule.

In paragraph .0530(a), North Carolina moves the applicability provisions that clarify the rule’s connection to the federal PSD rules found at 40 CFR 51.166, from paragraph .0530(g) to .0530(a). There are no substantive changes to the language of the paragraph.

In paragraph .0530(b), the State rewords prefatory language for existing exceptions to the definitions incorporated from the federal PSD rules but does not change the meaning of the provision. Next, in subparagraph .0530(b)(4), North Carolina deletes “ammonia” from the PSD provision stating that volatile organic compounds and ammonia are not significant precursors to fine particulate matter (PM_{2.5}). Removing

ammonia from the list of constituents that are not significant precursors to PM_{2.5} aligns with the PSD definition of “regulated NSR pollutant,” at 40 CFR 51.166(b)(49)(i)(b), which the State already incorporates by reference. EPA does not specifically address ammonia in the PSD regulations, so the SIP revision does not change how ammonia is treated with respect to attainment or unclassifiable areas. The SIP revision also makes other minor changes to subparagraph (b)(4) such as changing formatting and minor wording changes.

The revision adds subparagraph .0530(b)(5) to specify different language from 40 CFR 51.166(b)(49)(i)(a). The federal regulation states that as of January 1, 2011, condensable coarse PM (PM₁₀) and PM_{2.5} “shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits.” The version of subparagraph .0530(b)(5) in the SIP revision provides instead that, “starting January 1, 2011, in addition to PM₁₀ and PM_{2.5}, for particulate matter (PM), condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for each of these regulated NSR pollutants in PSD permits.” In this case, NCDAQ requirements are more stringent by requiring that total PM be accounted for, including total condensable PM, whereas the federal provisions only account for condensable PM₁₀ and PM_{2.5}. *See* 77 FR 65107 (October 25, 2012).

Next, North Carolina clarifies the compliance requirements for major stationary sources and major modifications at paragraph .0530(g). Paragraph .0530(g) previously stated that major sources and major modifications had to comply with requirements in 40 CFR 51.166(a)(7) and (i) and in 40 CFR 51.166(j) through (o) and (w). North Carolina

modifies this sentence to read that these projects shall comply with requirements in 51.166(a)(7) and (i) and in 51.166(j) through (r) and (w), which now includes paragraphs (p)-(r).

The North Carolina SIP already covered the provisions of subparagraph 51.166(p)(1), (p)(3), and (p)(4)-(7) regarding impacts to federal Class I areas at paragraph .0530(q). The existing SIP does not include a reference to subparagraph 51.166(p)(2) because this provision is a general statement affirming the federal land manager's responsibility to manage Class I areas and to "consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on" air quality related values such as visibility. States are not required to include this provision in SIPs. This provision merely describes responsibilities of federal land managers and is true whether or not North Carolina specifically includes it in the SIP. However, the SIP would now include subparagraph (p)(2) with the update to paragraph .0530(g). Additionally, 40 CFR 51.166(r)(1) is already covered by paragraph .0530(s), and 40 CFR 51.166(r)(2) is already covered by paragraph .0530(k). Moreover, paragraph .0530(u) covered the requirements of 40 CFR 51.166(r)(6) and (r)(7) in a different, but more stringent manner, and this paragraph continues to outline different and more stringent requirements than the federal minimum requirements. Paragraph .0530(u) is discussed in more detail below. Finally, paragraph .0530(r) provides procedures and requirements for processing permit applications and covers 40 CFR 51.166(q) and continues to do so.

Next, North Carolina revises its monitoring and recordkeeping requirements in subparagraph .0530(u) for projects which do not trigger PSD requirements, but which

make use of “projected actual emissions” for determining applicability. For sources that rely on “projected actual emissions” to determine PSD applicably, the federal NSR rules require recordkeeping and reporting for a modification that does not trigger major NSR when there could be a “reasonable possibility” that a project may result in a significant emissions increase of a regulated NSR pollutant.

Specifically, 40 CFR 51.166(r)(6)(vi)(a) provides that a “reasonable possibility” under paragraph (r)(6) occurs when a projected actual emissions increase is at least 50 percent of the amount that is a “significant emissions increase,” without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant. If a “reasonable possibility” occurs only as defined by paragraph (r)(6)(vi)(a), then the documentation of the project and ongoing recordkeeping and reporting requirements at (r)(6)(i)-(v) apply. Alternatively, 40 CFR 51.166(r)(6)(vi)(b) provides that a reasonable possibility occurs when a projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(40)(ii)(c), sums to at least 50 percent of the amount that is a “significant emissions increase,” without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant. The amount of emissions excluded at 40 CFR 51.166(b)(40)(ii)(c) is “that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions.” If a “reasonable possibility” occurs only as defined by (r)(6)(vi)(b), then the documentation and recordkeeping requirements of 40 CFR 51.166(r)(6)(i) apply, but the recordkeeping and reporting requirements at (r)(6)(ii)-(v) do not apply.

When North Carolina adopted NSR reform provisions, the State did not adopt the federal “reasonable possibility” standard. Instead, the State adopted recordkeeping and reporting requirements in Rule .0530(u) that apply to all modifications that use “projected actual emissions” to determine applicability.⁸ The SIP-approved version of this rule requires the owner or operator of a source with such a modification to submit a notification to NCDAQ before beginning construction that contains the information in .0530(u)(1)-(5), which is analogous to the information in 40 CFR 51.166(r)(6)(i). EPA incorporated this rule into North Carolina’s SIP on August 10, 2011. *See* 76 FR 49313. The federal regulations only require the owner or operator to submit documentation under 40 CFR 51.166(r)(6)(i) to the permitting authority pursuant to 40 CFR 51.166(r)(6)(ii) for projects at existing electric generating units that present a “reasonable possibility” pursuant to 40 CFR 51.166(r)(6)(vi)(a). Therefore, the universe of projects which must provide the notification information to the NCDAQ Director is greater than that covered by 40 CFR 51.166(r)(6)(vi)(b).

The modified rule, however, narrows the universe of projects which must comply with the ongoing recordkeeping and reporting requirements in paragraph .0530(u) by including a 50 percent or greater threshold similar to the federal reasonable possibility rule at 51.166(r)(6)(vi)(a). Under the SIP-approved version of the paragraph, owners or operators using projected actual emissions are subject to ongoing recordkeeping and reporting requirements if a permit revision is not required. North Carolina’s rule revision requires the owner or operator of projects that would meet the reasonable possibility criteria of rule 51.166(r)(6)(vi)(a) to submit a permit application to NCDAQ to include a

⁸ The revised rule clarifies that .0530(u) applies in lieu of the requirements of 40 CFR 51.166(r)(6) and (7).

permit condition with specific monitoring, recordkeeping, and reporting of annual emissions for 10 years if the project involves increasing the emissions unit's design capacity or its potential to emit for the regulated NSR pollutant, which is not expressly required under the federal reasonable possibility rule.

Although these changes would reduce the number of sources covered by the ongoing recordkeeping and reporting requirements in paragraph .0530(u), the sources subject to these requirements would now match those in the federal reasonable possibility rule under 51.166(r)(6)(vi)(a), and when adopting the federal rule, EPA concluded that the 50 percent threshold would capture most if not all projects that have a higher probability of variability or error in projected emissions and provided certainty for the regulated community and reviewing authorities. *See* 72 FR 72610, December 21, 2007. Furthermore, revised paragraph .0530(u) still requires a greater universe of projects to undertake the initial documentation and recordkeeping than the federal regulations, and still goes a step further to require that the initial documentation is provided to the NCDAQ Director instead of only being maintained on site. The revised rule also now requires permit conditions to provide for ongoing monitoring, recordkeeping, and reporting for sources that meet North Carolina's reasonable possibility threshold. For these reasons, EPA proposes to find that the changes to paragraph .0530(u) would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

Next, North Carolina updates the incorporation by reference date of 40 CFR 51.166 in paragraph .0530(v) from July 1, 2014, to July 1, 2019, for portions of the CFR that are referred to in Rule .0530 and revises the direct link to the new CFR version at

02D .0530(v).^{9, 10, 11, 12, 13} Additionally, the State adds a sentence to paragraph .0530(v) stating that “[f]ederal regulations referenced in 40 CFR 51.166 shall include subsequent amendments and editions.” This addition ensures that North Carolina’s PSD rule will automatically incorporate updates to rules cross-referenced in 40 CFR 51.166.

2. Revisions Based on the IBR Update

⁹ In this NPRM, EPA is not proposing to incorporate language to implement the equipment replacement provision under routine maintenance repair and replacement, as provided in EPA’s October 27, 2003, rule. *See* 68 FR 61248. Specifically, EPA is not acting on the incorporation by reference of the 2003 changes to 40 CFR 51.166(b)(2)(iii)(a), the incorporation by reference of 40 CFR 51.166(b)(53) through (b)(56), or 51.166(y). Instead, the version of 40 CFR 51.166(b)(2)(iii)(a) approved into the SIP would remain March 15, 1996. The 2003 changes and new provisions were in the version of the federal rule incorporated by North Carolina, but prior to this were vacated by the Circuit Court of Appeals for the District of Columbia. *See New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006). EPA subsequently removed the vacated provisions from the CFR. *See* 86 FR 37918 (July 19, 2021). NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of these provisions into the North Carolina SIP.

¹⁰ In this NPRM, EPA is not proposing to act on provisions addressing the treatment of fugitive emissions, as provided in EPA’s December 19, 2008, rule. *See* 73 FR 77882. Specifically, EPA is not acting on the incorporation by reference of 40 CFR 51.166(b)(2)(v) nor 51.166(b)(3)(iii)(d). EPA subsequently published a final rule placing an indefinite stay on the effective date of these provisions. *See* 76 FR 17548 (March 30, 2011). NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of these provisions into the North Carolina SIP.

¹¹ In this NPRM, EPA is not proposing to incorporate a provision removing nonattainment NSR for revoked NAAQS where the area is attainment for the current NAAQS (“orphan nonattainment areas”), as provided in the implementation rule for the 2008 8-hour ozone NAAQS at 40 CFR 51.166(i)(2). *See* 80 FR 12264 (March 6, 2015). This provision was in the version of the federal rule incorporated by North Carolina. Instead, the version of 40 CFR 51.166(i)(2) incorporated by reference at 02D .0530 would remain July 1, 2014. The Circuit Court of Appeals for the District of Columbia vacated the ability to remove nonattainment NSR from such orphan nonattainment areas in the absence of formal redesignation to attainment or unclassifiable for that NAAQS. *See South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of this provision into the North Carolina SIP. Such a provision would not have been operable in the North Carolina SIP, as all nonattainment areas for the 1997 8-hour ozone NAAQS were redesignated prior to the revocation of the NAAQS, and the 1997 annual PM_{2.5} NAAQS is only revoked for areas first redesignated.

¹² In this NPRM, EPA is not proposing to incorporate the grandfathering provision for the 2015 8-hour ozone NAAQS at 40 CFR 51.166(i)(11)(ii). *See* 80 FR 65292 (October 26, 2015). This provision was in the version of the federal rule incorporated by North Carolina, but was later vacated by the Circuit Court of Appeals for the District of Columbia. *Sierra Club v. EPA*, 936 F.3d 597 (D.C. Cir. 2019). EPA subsequently removed the vacated provision from the CFR. *See* 86 FR 37918 (July 19, 2021). NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of this provision into the North Carolina SIP.

¹³ On August 19, 2015, EPA revised the PSD program to remove vacated elements regarding the regulation of greenhouse gas (GHG) sources referred to as “Step 2” or “GHG-only” sources. *See* 80 FR 50199. North Carolina regulates GHG sources for the purposes of implementing the PSD program at Rule 02D .0544, and therefore, this change will be addressed more specifically under Section III.B of this NPRM which discusses Rule 02D .0544.

With the change to the IBR date, there are several provisions of 40 CFR 51.166 referenced in the State's PSD program that have changed, which are discussed herein.

NCDAQ's updated IBR date would change the definition of "building, structure, facility, or installation" at Rule 02D .0530(b) based on EPA's updated definition.¹⁴ Specifically, EPA updated 40 CFR 51.166(b)(6), containing the definition of a "building, structure, facility, or installation," to address onshore oil and gas extraction activities in a June 3, 2016, final rulemaking. *See* 81 FR 35622. EPA added paragraph (b)(6)(ii), which allows SIPs to include a different provision for what is considered a "building, structure, facility, or installation" with respect to Standard Industrial Classification Group 13 for onshore oil and gas extraction activities. Pollutant-emitting activities in this SIC group are considered to be adjacent under this provision "if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another...and they share equipment." The effect of this change is that permitting is simplified for these activities, and there is a bright line beyond which oil and gas extraction activities on different surface sites do not need to be aggregated as a single stationary source. Therefore, with this change, fewer onshore oil and gas projects may be considered major. EPA noted in the June 3, 2016, final rule that these changes to paragraph (b)(6), in conjunction with the landscape of updated emissions controls for this sector, is not likely to have adverse impacts on air quality, and that other factors such as "the location of the underground mineral assets, advances in drilling technology that allow multiple wells to be drilled from one surface site, restrictions on well spacing

¹⁴ Changing the definition of "building, structure, facility, or installation" effectively changes the definition of "stationary source" for purposes of PSD permitting because "stationary source" is defined as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant."

imposed by a state agency such as an oil and gas conservation commission, and the restrictions imposed by the owner of the surface land” are more likely to affect the owner’s or operator’s selection of spacing of these activities than this rule change.¹⁵ See 81 FR 35622 (June 3, 2016) for more information on EPA’s rationale for the revised definition. NCDAQ confirmed that this revised definition of “building, structure, facility, or installation” at 40 CFR 51.166(b)(6)(ii) is included in the State’s revised PSD program as portions of 40 CFR 51.166 that allow the State to exempt or not apply certain requirements in certain circumstances are adopted under the State’s PSD Rule.¹⁶

Next, NCDAQ’s paragraph .0530(r) provides procedures and requirements for processing permit applications and incorporates EPA’s public notice provisions at 40 CFR 51.166(q). EPA issued a final rule on October 18, 2016, that provided permitting authorities with the ability to public notice draft permits and permitting decisions for major sources, including for PSD through revisions to 40 CFR 51.166(q), on a Web site identified by the reviewing authority as a possible alternative to newspaper notices. See 81 FR 71613. NCDAQ’s updated IBR date would reference the modified language at 40 CFR 51.166(q) which provides at (q)(2)(iii) that the required notifications “may be made on a Web site identified by the reviewing authority,” and that the selected notification method, the “consistent noticing method,” “shall be used for all permits subject to notice

¹⁵ Also note that the North Carolina SIP prohibits certain sources from causing an exceedance of an air quality standard or contributing to a violation of such standards (*see* 15A NCAC 02D .0401(c)), and includes a minor NSR construction permitting program for new minor sources and minor modifications to existing sources (*see* 15A NCAC 02Q .0300).

¹⁶ See the document entitled “Call between Region 4 of the Environmental Protection Agency (EPA) and the North Carolina Department of Environmental Quality’s Division of Air Quality (NCDAQ) regarding 15A NCAC 02D .0530, *Prevention of Significant Deterioration*,” which is included in the docket for this proposed action.

under this section and may, when appropriate, be supplemented by other noticing methods on individual permits.”

The ability to use a Web site as the exclusive method for notification as an alternative to newspaper noticing for PSD permits requires the reviewing authority to select electronic notification as its “consistent noticing method” for all PSD permits. There is no language in Rule .0530 or the SIP revision that identifies electronic notification as NCDAQ’s “consistent noticing method” for its PSD permits nor is a Web site for such notices identified. Therefore, although NCDAQ may include public notice via a Web site identified by the State, NCDAQ must also continue to public notice all of these permits via “advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed” until the State submits a SIP revision selecting electronic notice as its “consistent noticing method” and EPA approves that revision.¹⁷

Finally, the updated incorporation by reference of federal PSD provisions captures EPA’s updated air quality modeling procedures. As part of EPA’s April 15, 2020, conditional approval of infrastructure SIP requirements for PSD for the 2015 8-hour ozone NAAQS, North Carolina committed to update its PSD regulations to reference the most current version of Appendix W to part 51. *See* 85 FR 20836. EPA approved the most recent version of Appendix W on January 17, 2017 (82 FR 5182), so North Carolina’s incorporation by reference of the federal PSD rules with a date of July 1, 2019, includes the provisions found in paragraph 51.166(l), *Air Quality Models*, which

¹⁷ *See* the document entitled “Call between Region 4 of the Environmental Protection Agency (EPA) and the North Carolina Department of Environmental Quality’s Division of Air Quality (NCDAQ) Regarding 15A NCAC 02D .0530, *Prevention of Significant Deterioration*,” which is included in the docket for this proposed action.

requires use of the latest approved version of Appendix W when carrying out air quality modeling for PSD purposes. Also note that the language discussed above that the State adds to paragraph .0530(v) to include subsequent amendments and editions of federal regulations referenced in 40 CFR 51.166 ensures that North Carolina's PSD rule will automatically incorporate the most up-to-date version of Appendix W because it is cross-referenced in 40 CFR 51.166(l). Therefore, EPA proposes to find that these changes resolve EPA's April 15, 2020, conditional approval of North Carolina's September 27, 2018, 2015 8-hour ozone infrastructure SIP submission addressing PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and EPA is proposing to convert the conditional approval to a full approval.

The changes to North Carolina's PSD regulation at Rule 2D .0530 are either consistent with or more stringent than federal requirements and would not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable CAA requirement. For these reasons, as detailed above, EPA is proposing to approve the aforementioned changes to 2D .0530 into the North Carolina SIP.

B. 15A NCAC 02D .0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*

1. Revisions to the North Carolina GHGs PSD Rule

As part of the April 13, 2021, submission, North Carolina also includes changes to the State's PSD requirements for Greenhouse Gases (GHGs) found at Rule 02D .0544. The updates include clarification to the applicability of the rule; changes to requirements

for monitoring, recordkeeping, and reporting; an update to the incorporation by reference date of 40 CFR 51.166; and other minor changes such as typographical changes.

In paragraph .0544(a), similar to paragraph .0530(a) in the companion PSD rule, North Carolina moves the applicability provisions that clarify the rule's connection to the federal PSD rules found at 40 CFR 51.166, from paragraph .0544(f) to .0544(a). Next, North Carolina clarifies the compliance requirements for these sources by revising a reference to 40 CFR 51.166 at paragraph .0544(f). Paragraph .0544(f) previously stated that major sources and major modifications had to comply with requirements in 40 CFR 51.166(i) and (a)(7) and in 51.166(j) through (o) and (w). North Carolina modifies this sentence to read that these projects shall comply with requirements in 51.166(i) and (a)(7) and in 51.166(j) through (r) and (w), which now includes paragraphs (p)-(r). NCDAQ already included the provisions of paragraphs 51.166(p)(1), (p)(3), and (p)(4)-(7) regarding impacts to federal Class I areas at Rule 02D .0530(q). Rule 02D .0544 did not expressly cover paragraph 40 CFR 51.166(p) because air quality related values in federal Class I areas such as visibility are covered by Rule 02D .0530.¹⁸ However, paragraph .0544(f) now also includes a reference to paragraph 51.166(p). This is not a true change to the North Carolina SIP because if GHGs are regulated for PSD—because another regulated NSR pollutant has triggered PSD—Class I protections also already apply wherever there may be impacts, pursuant to Rule 02D .0530(q).

¹⁸ See, e.g., “PSD and Title V Permitting Guidance for Greenhouse Gases” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Research Triangle Park, NC. EPA-457/B-11-001 (March 2011). Available at: <https://www.epa.gov/sites/default/files/2015-12/documents/ghgpermittingguidance.pdf>.

Additionally, 40 CFR 51.166(r)(1) is already covered by paragraph .0544(m), and 40 CFR 51.166(r)(2) is already covered by paragraph .0544(i). Moreover, paragraph .0544(n) is covered the requirements of 40 CFR 51.166(r)(6)-(7) in a different, but more stringent manner, and this paragraph continues to outline different and more stringent requirements than the federal minimum requirements. Paragraph .0544(n) is discussed in more detail below. Paragraph .0544(l) provides procedures and requirements for processing permit applications and also covers 40 CFR 51.166(q) and continues to do so. Additionally, the language previously approved at .0544(f) regarding the transition provisions at 40 CFR 52.21(i)(11)(i) and (ii) and 40 CFR 52.21(m)(1)(vii)-(viii) is removed. These transition provisions functioned for a short time¹⁹ as grandfathering provisions in moving from total suspended particulates as the indicator of a PM NAAQS to PM₁₀ and have recently been removed from 40 CFR 52.21.²⁰ EPA notes that this language would never have functioned in Rule 02D .0544 because it does not relate to GHGs. Therefore, the removal of this PM₁₀ grandfathering language is clarifying in nature.

The State then makes changes to paragraph .0544(h) to align with paragraph .0530(j) by eliminating a reference to Rule 02Q .0302. Previously, paragraph .0544(h) specified that Rule 02Q .0302 did not apply to sources subject to Rule 02D .0544. However, Rule 02Q .0302, *Facilities Not Likely to Contravene Demonstration*, which provided exemptions from the requirement to obtain minor NSR construction permits, is

¹⁹ The exemption at 40 CFR 52.21(i)(11)(i) for air quality monitoring required at 40 CFR 52.21(m)(1)(i)-(iv) of PM₁₀ functioned for PSD permit applications received on or before June 1, 1988. The exemption at 40 CFR 52.21(i)(11)(ii) relating to air quality monitoring required at 40 CFR 52.21(m)(1)(iii)-(iv) and (m)(3) functioned for PSD permit applications received after June 1, 1988, but no later than December 1, 1988. See 52 FR 24672 (July 1, 1987).

²⁰ See 86 FR 37918 (July 19, 2021).

repealed and was never approved as part of the North Carolina SIP. Therefore, there is no need to specify that this repealed regulation is not applicable to sources that trigger PSD.

Next, North Carolina makes changes in paragraph .0544(n) that conform to the changes made to companion PSD paragraph .0530(u), described in greater detail above. Like the PSD changes discussed in Section III.A.1 of this NPRM, the North Carolina regulations remain more stringent than the federal requirements by 1) requiring all projects utilizing the “projected actual emissions” approach to document the project details and notify NCDAQ of the project,²¹ which is more stringent than the documentation and initial recordkeeping requirements of 51.166(r)(6)(i), and 2) requiring those projects which calculate a “projected actual emissions” increase pursuant to 40 CFR 51.166(b)(40)(ii)(a) and (ii)(b), minus the baseline actual emissions, without reference to the amount that is a significant net emissions increase, of 50 percent or greater of the amount that is a significant emissions increase for the regulated NSR pollutant to include monitoring, recordkeeping, and reporting (consistent with 51.166(r)(6)(ii)-(v)) in the issued permit.

The State then makes several changes to paragraph .0544(o). First, North Carolina updates the incorporation by reference date of 40 CFR 51.166 from July 20, 2011, to July 1, 2019, and revises the direct link to the new CFR version. Next, like changes made to 02D .0530(v), the State adds a sentence to paragraph .0544(o) stating

²¹ Notification “shall include: (1) a description of the project; (2) identification of sources whose emissions could be affected by the project; (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c); (4) the calculated baseline actual emissions in Subparagraph (b)(1) of this Rule an explanation of how the baseline actual emissions were calculated; and (5) any netting calculations, if applicable.” *See* 15A NCAC 02D .0544(n).

that “[f]ederal regulations referenced in 40 CFR 51.166 shall include subsequent amendments and editions.” This addition ensures that North Carolina’s PSD GHG rule will automatically incorporate updates to rules cross-referenced in 40 CFR 51.166.

2. Revisions Based on the IBR Update

There are several changes included in the PSD program with the change to the IBR date. The relevant changes related to GHGs in this timeframe covered by the update are discussed in this section.

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs. *See* 75 FR 17004 (April 2, 2010). To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA’s PSD and title V programs, on June 3, 2010, EPA published a final rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (hereinafter referred to as the “GHG Tailoring Rule”). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, EPA limited application of PSD and title V requirements to sources and modifications of GHG emissions, but only if they were subject to PSD or title V “anyway” due to their emissions of pollutants other than GHGs. These sources and modifications covered under Step 1 are commonly referred to as “anyway sources” and “anyway modifications,” respectively.

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements extended beyond the sources and modifications covered under Step 1 to apply to sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD

permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the federal PSD regulations. EPA generally described the sources and modifications covered by PSD under Step 2 of the Tailoring Rule as “Step 2 sources and modifications” or “GHG-only sources and modifications.”

Subsequently, EPA published Step 3 of the GHG Tailoring Rule on July 12, 2012. *See* 77 FR 41051. In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD and title V applicability based on emissions of GHGs remained the same as established in Steps 1 and 2 of the Tailoring Rule.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA’s regulation of GHG Step 1—or “anyway” sources—but held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source (or is undergoing a major modification) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated the PSD and title V permitting requirements for GHG Step 2 sources and modifications.

In accordance with the Supreme Court’s decision, on April 10, 2015, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *See Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). The Amended Judgment specifically vacated the EPA regulations under review

(including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) “to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.” *Id.* at 7-8.

EPA subsequently promulgated a good cause final rule on August 19, 2015, entitled “Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.” *See* 80 FR 50199 (August 19, 2015) (hereinafter referred to as the “Good Cause GHG Rule”). The rule removed from the federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (i.e., 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can the Agency approve provisions submitted by a state for inclusion in its SIP providing this authority. On October 3, 2016, EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to address the GHG applicability threshold for PSD in order to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. *See* 81 FR 68110 and 81 FR 81711.

North Carolina regulates GHG sources for the purposes of implementing the PSD program at Rule 02D .0544, and the State’s updated IBR date of 40 CFR 51.166(b) includes this update to the definition of “subject to regulation” at (b)(48) included in EPA’s August 19, 2015, Good Cause GHG Rule. However, on August 8, 2019, EPA approved a January 12, 2018, SIP revision to modify the applicability procedures at Rule 02D .0544(a) to specify that a “major stationary source or major modification shall not be

required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its greenhouse gases emissions.” *See* 84 FR 38876. The intent and effect of the January 12, 2018, SIP revision was to address the D.C. Circuit court’s vacatur of GHG-only or “Step 2” provisions in the federal PSD regulations. Therefore, the North Carolina SIP already contains a provision addressing the *UARG* decision, which vacated the ability to regulate GHG-only sources under the PSD program.²² The change to the definition of “subject to regulation” at 40 CFR 51.166(b)(48) made in EPA’s August 19, 2015, final rule is incorporated in the April 13, 2021, SIP revision, which aligns the North Carolina definitions with the federal regulations and with North Carolina’s approved applicability procedures. *See* EPA’s August 8, 2019, final action for further details on how the January 12, 2018, SIP revision revised the North Carolina PSD program for regulating GHGs.

Finally, similar to changes made to 02D .0530(v), the updated incorporation by reference of federal PSD provisions captures EPA’s updated air quality modeling procedures. As part of EPA’s April 15, 2020, conditional approval of infrastructure SIP requirements for PSD for the 2015 8-hour ozone NAAQS, North Carolina committed to update its PSD regulations to reference the most current version of Appendix W to part 51. *See* 85 FR 20836. EPA approved the most recent version of Appendix W on January 17, 2017 (82 FR 5182), so North Carolina’s incorporation by reference of the federal PSD rules with a date of July 1, 2019, includes the provisions found in paragraph

²² North Carolina supplemented its January 12, 2018, submittal on March 4, 2019, to, among other things, exclude the incorporation by reference of the provisions of the Biomass Deferral Rule. *See* 76 FR 43490 (July 20, 2011). For further discussion on the March 4, 2019, letter, refer to EPA’s May 23, 2019, NPRM (84 FR 23750). Therefore, EPA understands that North Carolina continues to not adopt the Biomass Deferral Rule provisions in this IBR update of 40 CFR 51.166 provisions. EPA has since removed this Biomass Deferral Rule language from the CFR. *See* 86 FR 37918 (July 19, 2021).

51.166(l), *Air Quality Models*, which requires use of the latest approved version of Appendix W when carrying out air quality modeling for PSD purposes. Also note that the language discussed above that the State adds to paragraph .0544(o) to include subsequent amendments and editions for federal regulations referenced in 40 CFR 51.166 will automatically incorporate the most up-to-date version of Appendix W because it is cross-referenced in 40 CFR 51.166(l). Therefore, EPA proposes to find that these changes resolve EPA's April 15, 2020, conditional approval of North Carolina's September 27, 2018, 2015 8-hour ozone infrastructure SIP submission addressing the PSD-related requirements of element C, Prong 3, and element J, and EPA is proposing to convert the conditional approval to a full approval.

The changes to North Carolina's PSD regulation for GHGs, 02D .0544, are either consistent with or more stringent than federal requirements and would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. For these reasons, as detailed above, EPA is proposing to approve the aforementioned changes to Rule 02D .0544 into the North Carolina SIP.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section III of this preamble, EPA is proposing to incorporate by reference North Carolina regulations 15A NCAC 02D .0530, "Prevention of Significant Deterioration," state effective on October 1, 2020, and .0544, "Prevention of Significant Deterioration Requirements for Greenhouse Gases," state effective on November 1,

2020.²³ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the North Carolina SIP and convert the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is proposing to approve changes to North Carolina Rules 15A NCAC 02D .0530, *Prevention of Significant Deterioration*, and .0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting federal requirements and does not

²³ EPA is not proposing to approve the October 1, 2020, state effective version of Rule 02D .0530 to the extent the rule would incorporate by reference 40 CFR 51.166(b)(2)(iii)(a) as of July 1, 2019. Instead, the version of 40 CFR 51.166(b)(2)(iii)(a) approved into the SIP would remain March 15, 1996, with a state effective date of November 21, 1996. *See* 64 FR 55831 (October 15, 1999). EPA is not proposing to approve the October 2020, state effective version of Rule 02D .0530 to the extent the rule would incorporate by reference 40 CFR 51.166(i)(2). Instead, the version of 40 CFR 51.166(i)(2) approved into the SIP would remain July 1, 2014, approved with a state effective date of September 1, 2017. *See* 83 FR 45827 (September 11, 2018). Finally, EPA is not proposing to approve the October 1, 2020, state effective version of Rule 02D .0530 to the extent the rule would incorporate by reference the following federal provisions: 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(d), 51.166(b)(53)-(56), 51.166(i)(11)(ii), and 51.166(y). If EPA finalizes this action, the Agency will update the SIP table at 40 CFR 52.1770(c) to reflect these exceptions.

impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically a significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and

legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: September 30, 2022.

Daniel Blackman,

Regional Administrator,

Region 4.

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